



REPLY TO DES MOINES OFFICE

September 21, 2009

Via Electronic Comment Filing System

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

**Re: WC Docket No. 09-152
Great Lakes Communications Corp. and Superior Telephone
Cooperative Petition for Declaratory Ruling**

Dear Ms. Dortch

Farmers Mutual Telephone Company of Riceville, Iowa, Interstate 35 Telephone Company and Dixon Telephone Company (collectively, "Iowa RLECs") are filing the attached comments and ancillary exhibits in the above-referenced docket in accordance with Public Notice DA 09-1843, released August 20, 2009.

If you have any questions regarding this filing, please contact the undersigned at (515) 288-2500 or at BobHolz@davisbrownlaw.com.

Sincerely,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

/s/ Robert F. Holz, Jr.

Attachments

cc with

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DAVIS BROWN KOEHN SHORS & ROBERTS P.C.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Great Lakes Communications Corp.)	WC Docket No. 09-152
and Superior Telephone Cooperative)	
Petition for Declaratory Ruling)	

**COMMENTS OF THE FARMERS TELEPHONE COMPANY
OF RICEVILLE, IOWA; INTERSTATE 35 TELEPHONE COMPANY and
DIXON TELEPHONE COMPANY**

The three Iowa rural exchange companies identified above (Iowa RLECs) file these comments in accord with the Public Notice released August 20, 2009.

The Iowa RLECs are each a party to Docket No. FCU-07-02 before the Iowa Utilities Board (Board) and also a party to one or more federal court cases pending in the United States District Court for the Southern District of Iowa.

The federal jurisdictional issues in this docket will be amply presented by attorneys regularly appearing before the Commission. The Iowa RLECs submit these comments to express the urgent need for the Commission to delineate and clarify the fundamental ground rules for service to conference bridge companies and the associated access charges for services to interexchange carriers (IXCs). The Iowa RLECs are terminating the IXC customer calls to those conference bridge companies consistent with prior orders of the Commission and yet the IXCs have refused to pay the applicable access charges for such services.¹

¹ The IXCs have become emboldened by the inaction of the Commission and have withheld all access payments from the Iowa RLECs. Furthermore, the IXCs now simply withhold payments from any LEC of any amount they choose to contest, an act of purely unlawful self-help.

As stated in the Petition and Petitioner's Opposition to Qwest's Motion to Suspend the Comment Schedule, the Iowa Board has decided a case on this subject inconsistent with prior orders of the Commission.²

Qwest and Sprint have already indicated their intent to apply any decision of the Iowa Board as controlling on both inter and intrastate traffic. Attached as **Exhibit A** is a copy of the relevant pages of the May 6, 2008 response of Qwest to a motion of the Iowa RLECs to strike matters unrelated to the intrastate jurisdiction of the Board. In its Footnote 7, Qwest makes clear its intent to take the findings of the Iowa Board "to the federal district court proceeding in Iowa, and ask the Honorable Judge Gritzner to order the respondents and their FCSC partners to refund the interstate access charges improperly assessed on Qwest."³

Likewise, Sprint is using the Board decision as support for the proposition that the termination of its customer's calls to conference bridge companies "is not subject to access under any tariff". (emphasis added) Attached as **Exhibit B** is a copy of an email communication from Julie Walker of Sprint to Doug Nelson of Terril Telephone Company of Terril, Iowa of August 25, 2009. Concerning the Iowa Board decision meeting, Sprint states:

As you know, the IUB recently ruled such traffic to be illegal based on the fact that conferencing partners of the LECs are not end users and therefore the service is not subject to access under any tariff.

The IXCs clearly intend that the Iowa Board order will usurp the authority of the Commission over interstate traffic and access charges. The Iowa federal court has recognized the primacy of the Commission on interstate communications. It has stayed a series of cases

² The agenda meeting to reach a decision was held on August 14, 2009. As of the date of filing these comments, the written formal order of the Board has just been issued. The intrastate traffic over which the Iowa Board has jurisdiction constitutes only some 3% of the traffic terminated to conference bridge companies.

³ As noted in the Petitioner's Opposition to Qwest's Motion to Suspend the Comment Schedule, Qwest is already taking the Board decision to the South Dakota federal court even before there is a written decision by the Board.

pending before it pending the reconsideration of the *Qwest v. Farmers and Merchants* case before the Commission. Attached as **Exhibit C** is a copy of the federal court order of Judge Gritzner staying the *Interstate 35 v. Verizon* case. In that order the judge lists the cases pending before him which are stayed pending a determination by the Commission. The initial stay order was issued February 13, 2008, some 19 months ago. It is imperative that the Commission provide the necessary guidance and determination of the issues which have formed the basis for the IXCs continuous refusal to pay the terminating access charges.

The IXCs have charged and collected their applicable toll charges from their customers but refuse to pay the Iowa RLECs for their services terminating the calls and making the toll calls possible. The Commission is the definitive voice on this subject and needs to be heard promptly to resolve the now long standing dispute over nonpayment by the IXCs for access services to conference bridge companies.

From its orders in *Jefferson, Frontier and Beehive*⁴ in 2001 and 2002 to its NECA order of June 28, 2007⁵, investigation order of August 24, 2007⁶ and Farmers and Merchants order of October 2, 2007⁷, the Commission has been presented with the IXC arguments of the illegality of access charges for conference bridge company traffic. While the rates to be charged have been brought into issue, there has never been any finding by the Commission of illegality of the access charges themselves. To the contrary, the cases have declined to so rule, yet the IXCs continue to refuse to pay⁸.

⁴ *AT&T Corp. v. Jefferson Telephone Company*, 16 FCC Rcd., 16130 (2001), *AT&T Corp. v. Frontier Communications of Mt. Pulaski, Inc.*, 17 FCC Rcd., 4041 (2002), *AT&T v. Beehive Telephone Company*, 17 FCC Rcd., 11641 (2002).

⁵ Docket WCB-Pricing No. 07-10

⁶ Order Designating Issues for Investigation in the Matter of Investigation of Certain 2007 Annual Access Tariffs, WC Docket No. 07-184

⁷ *Qwest v. Farmers & Merchants Mutual Telephone Company*, 22 FCC Rcd. 17973

⁸ This includes a refusal to pay the rates approved by the Commission under its Safe Harbor provisions and charged under the NECA Tariff

This declaratory ruling request provides an appropriate vehicle along with the reconsideration order in the *Farmers & Merchants* case to give proper guidance to state commissions and the federal courts regarding the applicability of access charges to the termination of long distance calls to conference bridge companies.

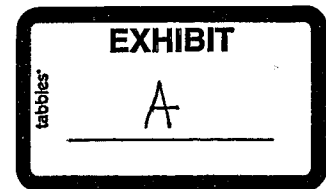
Respectfully submitted,

FARMERS TELEPHONE COMPANY OF RICEVILLE,
IOWA; INTERSTATE 35 TELEPHONE COMPANY and
DIXON TELEPHONE COMPANY

By: /s/ Robert F. Holz, Jr.
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Its Attorneys

September 21, 2009



STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

Qwest Communications Corporation,

Complainant,

v.

Superior Telephone Cooperative, The
Farmers Telephone Company of Riceville,
Iowa, The Farmers & Merchants Mutual
Telephone Company of Wayland, Iowa,
Interstate 35 Telephone Company d/b/a
Interstate Communications Company,
Dixon Telephone Company, Reasnor
Telephone Company, LLC, Great Lakes
Communication Corp., and Aventure
Communication Technology, LLC,

Respondents.

DOCKET NO. FCU-07-02

PUBLIC REDACTED VERSION OF
QWEST'S RESPONSE TO CERTAIN RESPONDENTS' MOTION TO STRIKE
ASPECTS OF QWEST'S PREFILED DIRECT TESTIMONY

Contrary to the Respondents' desperate attempts to limit the scope of the Iowa Utilities Board's review of this case, their schemes and bilking of tens millions of dollars in intrastate and interstate switched access revenues are predicated upon their violation, abuse, and manipulation of Iowa local exchange tariffs, state law, and the LECs' certification as local carriers. From the onset of this case, the Respondents have hoped they could keep the full scope of their traffic pumping scheme away from the eyes of the Board. The LEC Respondents and their Free Calling Service Company ("FCSCs") partners consistently refused to produce information about interstate calling, claiming it was irrelevant to the issues before the Board. On at least two

In this case, the Board will simply interpret the LEC Respondents' local exchange tariffs in light of Iowa law. First, the Board has defined "customer" for telecommunications services as follows:

"Customer" means any person, firm, association, corporation, agency of the federal, state or local government, or legal entity *responsible by law for payment for communication service from the telephone utility.*

199 IAC § 22.1(1), 22.1(3)(476) (emphasis added). Second, as noted above, the interstate tariffs show that to be a local exchange customer under their own tariffs, the LEC Respondents have to charge the person EUCL and USF charges. [REDACTED]

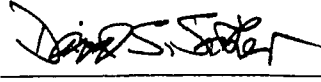
[REDACTED]. Jeff Owens' Testimony at 46, 92-94. The evidence shows the FCSCs cannot possibly be the LEC Respondents' customers.⁷

Given that the interstate tariffs are critical to the issues which the LEC Respondents admit are before the Board, there is no basis for the LEC Respondents' conclusion that Qwest must break out interstate and intrastate facts in order for those facts to be relevant and within the Board's jurisdiction to resolve Qwest's claims. In order to make a decision based on substantial facts, the Board must be able to see the traffic pumping facts – both traffic volume and revenues – in their true scope, which necessarily includes both interstate and intrastate traffic.

⁷ The LEC Respondents claim that Jeff Owens asks the Board to order the LEC Respondents to refund all access charges associated with traffic pumping. Qwest will clarify what Mr. Owens meant by this statement, as it could have been made more clear: the Board should (1) order the LEC Respondents to refund access charges associated with intrastate calling; (2) also declare that under the local exchange tariffs the FCSCs are "partners," not "customers; (3) find that none of the traffic was delivered to an end-user premise; and (4) find that calls must terminate in the local exchange area for access charges to apply. Qwest will then take these findings to the Federal District Court proceeding in Iowa, and ask the Honorable Judge Gritzner to order the LEC Respondents and their FCSC partners to refund the interstate access charges improperly assessed on Qwest.

Respectfully submitted,

QWEST CORPORATION

by 

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May 6, 2008

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From: Doug Nelson <DOUG@terril.com>
To: ""bsnoddy@kiesling.com"" <bsnoddy@kiesling.com>, Dana Loring <DANA@terri...>
Date: 8/25/2009 3:09 PM
Subject: Fw: Scanned document from SSOPConfirm (SSOPConfirm@sprint.com)
Attachments: KSOPHL04-4A569_EXCHANGE_08252009-084525.PDF

Burnie/Bob

The IUB has not even written their finding yet how can they claim tandem traffic is included in the ruling. Even so the IUB only has authority over intrastate traffic Sprint should still owe us. Can you draft a response? How soon before the IUB will have the written finding out?

Thanks
Doug

Sent using BlackBerry

----- Original Message -----

From: Walker, Julie A [NTK] <Julie.A.Walker@sprint.com>
To: Doug Nelson
Sent: Tue Aug 25 09:08:10 2009
Subject: FW: Scanned document from SSOPConfirm (SSOPConfirm@sprint.com)

Hi Doug,

I apologize for the delay in responding to this letter, but it was just forwarded to me, obviously in light of the date noted for service implications.

In my review of the disputes Sprint has with Terril, they are related to partial billing of Spencer Mutual's conferencing/free chat line services. As you know, the IUB recently ruled such traffic to be illegal, based on the fact that conferencing partners of the LEC's are not end users, and therefore the service is not subject to access under any tariff.

Notwithstanding that fact, in the event the access was valid, Sprint has concern that some of the rate elements Terril is billing should be billed by INS, as well as questions about a relationship to Palmer Mutual's access billing for similar service.

Based on these facts, I'm assuming Sprint's service is not in jeopardy at this time. If you would like to discuss further, please feel free to contact me.

Thanks~
Julie Walker
Sprint Nextel Access Verification
913-762-6442

-----Original Message-----

From: SSOPConfirm
Sent: Tuesday, August 25, 2009 8:46 AM
To: Walker, Julie A [NTK]
Subject: Scanned document from SSOPConfirm (SSOPConfirm@sprint.com)

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EXHIBIT

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C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

INTERSTATE 35 TELEPHONE COMPANY d/b/a
INTERSTATE COMMUNICATIONS COMPANY,

Plaintiff,

vs.

MCI COMMUNICATIONS SERVICES, INC. d/b/a
VERIZON BUSINESS SERVICES,

Defendant.

No. 4:09-cv-00213-JEG

O R D E R

Before the Court is a motion to stay brought by Plaintiff Interstate 35 Telephone Co. d/b/a Interstate Communications Co. (Interstate). Defendant MCI Communications Services, Inc. d/b/a Verizon Business Services (Verizon) resists. No hearing has been requested nor does the Court find a hearing is necessary in the resolution of this matter. The motion is fully submitted and ready for disposition.

Interstate, an Iowa corporation, is a local exchange carrier (LEC) that provides local and long-distance telecommunications services to business and residential customers in Iowa. Verizon, a Delaware corporation, is an interexchange carrier (IXC) that, among other things, provides services that enable calls to be transmitted from one local exchange area to another local exchange area. Interstate provides IXCs, including Verizon, switched access service, that terminates calls delivered by Verizon to Interstate's customers. For this service, Verizon pays Interstate terminating access charges pursuant to federal and state exchange access tariffs. Interstate filed the present lawsuit, alleging Verizon failed to pay Interstate for terminating access service charges pursuant to state and federal tariffs and asserting claims for collection action pursuant to federal tariffs; collection action pursuant to state tariffs; violation of § 201 of the Communications Act of 1934, 47 U.S.C. § 151 et seq.; quantum meruit; unjust enrichment;

intentional interference with contractual relations; and intentional interference with prospective business relationships.

Interstate brings the present motion asking the Court to stay this proceeding pending the Federal Communications Commission's (FCC) reconsideration decision in Qwest Communications Corp. v. Farmers & Merchants Mutual Telephone Co., No. EB-07-MD-001, which involves the propriety of various terminating access charges. Verizon resists, arguing that although the FCC's Farmers case may be relevant to some issues in the present case including affirmative defenses and counterclaims Verizon intends to file, some issues from this case will remain unresolved by the FCC's Farmers reconsideration decision.

Central to Interstate's complaint and recovery, as well as Verizon's proposed but yet-to-be filed affirmative defenses and counterclaims, is whether the connection of various calls through Interstate's facilities actually constitutes terminating access service covered by the state and federal tariffs. In lawsuits similar to the present case that are also before this Court, the Court has previously granted motions to stay pending the FCC's Farmers reconsideration decision in the following cases: AT&T Corp. v. Adventure Commc'ns Tech., et al., No. 4:07-cv-00043-JEG-RAW; Qwest Commc'ns Corp. v. Superior Tel. Coop., No. 4:07-cv-00078-JEG-RAW; Sprint Commc'ns Co. v. Superior Tel. Coop., No. 4:07-cv-00194-JEG-RAW; Adventure Commc'ns Tech. et al. v. Sprint Commc'ns Co. et al., No. 4:08-cv-00005.¹ In addition, contemporaneous with the motion in this case, the Court is considering motions to stay in Farmers & Merchs. Mut. Tel. Co. of Wayland, Iowa, et al., No. 3:09-cv-00055-JEG-RAW; West Liberty Tel. Co. et al. v. MCI Commc'ns Servs., Inc. d/b/a Verizon Bus. Servs., No. 3:09-cv-00056-JEG-RAW; MCI Commc'ns Servs., Inc. d/b/a Verizon Bus. Servs. v. Farmers & Merchs. Mut. Tel. Co. of

¹ Subsequent to imposing the stay, the Court granted various motions for a partial lift of the stay for the limited purpose of allowing various defendants to file answers and counterclaims.

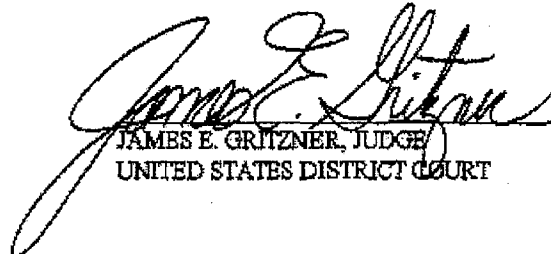
Wayland, Iowa, et al., No. 3:09-cv-00059-JEG-RAW; and Spencer Muni. Commc'ns Utility v. Global Crossing Telecommc'ns, Inc., No. 4:09-cv-00029-JEG-RAW.

Consistent with this Court's Order of February 13, 2008, filed in the AT&T (No. 4:07-cv-00043-JEG-RAW), Qwest (No. 4:07-cv-00078-JEG-RAW), and Sprint (No. 4:07-cv-00194-JEG-RAW) cases, the Court finds that because the Farmers decision "materially impacts" the present case, "there will be no undue prejudice to any party by the additional delay, and thus the most prudent course of action is to defer further action by the parties and the Court herein until the FCC has ruled on the merits of Qwest's petition for reconsideration." After the FCC has submitted its reconsideration decision in the Farmers case, the Court will enter an order directing further proceedings in this and the other related cases.

For the reasons stated, Interstate's Motion to Stay (Clerk's No. 6) is **granted**.

IT IS SO ORDERED.

Dated this 15th day of September, 2009.


JAMES E. GRIZNER, JUDGE
UNITED STATES DISTRICT COURT

Deb Flesher - Activity in Case 4:09-cv-00213-JEG-RAW Interstate 35 Telephone Company v. MCI Communications Services Inc Order on Motion to Stay

From: <cmecf_iasd@iasd.uscourts.gov>
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Date: 9/15/2009 12:28 PM
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U.S. District Court

United States District Court for the Southern District of Iowa

Notice of Electronic Filing

The following transaction was entered on 9/15/2009 at 12:25 PM CDT and filed on 9/15/2009

Case Name: Interstate 35 Telephone Company v. MCI Communications Services Inc

Case Number: 4:09-cv-213

Filer:

Document Number: 21

Docket Text:

ORDER granting [6] Plaintiff's motion to stay, deferring further action herein until the FCC has ruled on the merits of Qwest's petition for reconsideration. After the FCC has submitted its reconsideration decision in the Farmers case, the Court will enter an order directing further proceedings in this and the other related cases. See order for particulars. Signed by Judge James E. Gritzner on 9/15/2009. (nlh)

4:09-cv-213 Notice has been electronically mailed to:

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4:09-cv-213 Notice has been delivered by other means to: